

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	Facility ID No. 134411
<b>Whidbey Island Center for the Arts</b>	)	NAL/Acct. No. MB-200741410460
	)	FRN: 0008208548
Licensee of Low Power FM Station KWPA-LP	)	File No. BRL-20060928AQD
Coupeville, Washington	)	

**FORFEITURE ORDER**

**Adopted: June 25, 2010****Released: June 28, 2010**

By the Chief, Audio Division, Media Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order we issue a monetary forfeiture in the amount of five hundred dollars (\$500) to Whidbey Island Center for the Arts (“Licensee”), licensee of Low Power FM (“LPM”) Station KWPA-LP, Coupeville, Washington (“Station”), for willfully violating Section 73.3539 of the Commission’s Rules (“Rules”), by failing to timely file license renewal applications for the Station, and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended (“Act”), by engaging in unauthorized operation of the Station after its authorization had expired.<sup>1</sup>

**II. BACKGROUND**

2. On December 19, 2007, the Bureau issued a Notice of Apparent Liability for Forfeiture (“NAL”) in the amount of five hundred dollars (\$500) to Licensee for these violations.<sup>2</sup> As noted in the NAL, Licensee’s renewal application for the Station’s license term was due on October 1, 2005, four months prior to the February 1, 2006, expiration date.<sup>3</sup> Licensee provided no explanation for the untimely filing of the renewal application or its failure to request special temporary authorization (“STA”) to continue the Station’s operations after its license had expired. In response to the NAL, Licensee submitted a letter (“Letter”) on January 14, 2008.

3. In its Letter, Licensee asserts that the proposed forfeiture should be cancelled because (1) its failure to timely file its renewal application was inadvertent, and (2) paying the forfeiture would present a financial hardship.

**III. DISCUSSION**

4. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended (“Act”),<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and the

<sup>1</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>2</sup> *Whidbey Island Center for the Arts*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 21675 (MB 2007). The Commission granted the license renewal application on December 19, 2007.

<sup>3</sup> See 47 C.F.R. §§ 73.1020, 73.3539(a).

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

Commission's *Forfeiture Policy Statement*.<sup>6</sup> In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.<sup>7</sup>

5. In its Letter, Licensee states that its failure to timely file the renewal application was unintentional and that as such, the forfeiture should be cancelled. Michael J. Nutt, the Station's Past Chair, explains that Ms. Diana Lindsay, a Station volunteer who handled its FCC filings, developed a serious cancer in 2005 and left the Station.<sup>8</sup> It was only when another Station volunteer assumed her duties in 2006 that Licensee realized that its license had expired and filed the renewal application.<sup>9</sup>

6. As the Commission has held, however, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.<sup>10</sup> In the context of a forfeiture action, "willful" does not require a finding that the rule violation was intentional. Rather, the term "willful" means that the violator knew that it was taking (or, in this case, not taking) the action in question, irrespective of any intent to violate the Rules.<sup>11</sup> Moreover, the Commission has long held that "licensees are responsible for the acts and omissions of their employees and independent contractors,"<sup>12</sup> and has consistently "refused to excuse licensees from forfeiture penalties where the actions of employees or independent contractors have resulted in violations."<sup>13</sup> While we are sympathetic to the health problems experienced by Ms. Lindsay and the difficulties it posed for the Station, Licensee was ultimately responsible for ensuring it complied with the Commission's Rules by filing a timely renewal application.<sup>14</sup>

---

<sup>6</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> Letter at 1.

<sup>9</sup> *Id.*

<sup>10</sup> See *PJB Communications of Virginia, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 2088 (1992); *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance"); *Standard Communications Corp.*, Memorandum Opinion and Order, 1 FCC Rcd 358 (1986) (stating that "employee acts or omissions, such as clerical errors in failing to file required forms, do not excuse violations").

<sup>11</sup> See *Five Star Parking d/b/a Five Star Taxi Dispatch*, Forfeiture Order, 23 FCC Rcd 2649 (EB 2008) (declining to reduce or cancel forfeiture for late-filed renewal based on licensee's administrative error); *Southern California*, 6 FCC Rcd at 4387. See also *Domtar Industries, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 13811, 13815 (EB 2006); *National Weather Networks, Inc.*, Notice of Apparent Liability for Forfeiture, 21 FCC Rcd 3922, 3925 (EB 2006).

<sup>12</sup> *Eure Family Limited Partnership*, Memorandum Opinion and Order, 17 FCC Rcd 21861, 21863-64 (2002) ("*Eure*"); *MTD, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, Memorandum Opinion and Order, 35 FCC 2d 361 (1972).

<sup>13</sup> See *Eure*, 17 FCC Rcd at 21863-64; *Triad Broadcasting Company, Inc.*, Memorandum Opinion and Order, 96 FCC 2d 1235, 1244 (1984).

<sup>14</sup> See, e.g., *Educational Media Foundation*, Letter, 23 FCC Rcd 15366 (MB 2008) (citing *Request for Waiver by Center City School*, Order, 17 FCC Rcd 22424, 22426 (WCB 2002) ("it is the applicant who has responsibility ultimately for the timely submission of its application.")).

7. Licensee also states that “[a] \$500.00 fine for a totally inadvertent lapse is going to be an extreme hardship . . . .”<sup>15</sup> The Commission will not consider reducing or canceling a forfeiture in response to financial hardship unless the licensee submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflect the licensee’s current financial status.<sup>16</sup> Licensee has not provided any such documentation and we therefore will not reduce the forfeiture based on financial hardship.

8. We have considered Licensee’s Letter and the record of this case in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that Licensee willfully<sup>17</sup> violated Section 73.3539 of the Rules and willfully and repeatedly<sup>18</sup> violated Section 301 of the Act<sup>19</sup> and that no mitigating circumstances warrant cancellation or further reduction of the proposed forfeiture amount.<sup>20</sup>

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission’s Rules,<sup>21</sup> that Whidbey Island Center for the Arts SHALL FORFEIT to the United States the sum of five hundred dollars (\$500) for willfully violating Section 73.3539 of the Commission’s Rules and willfully and repeatedly violating Section 301 of the Communications Act of 1934, as amended.

10. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission’s Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>22</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be

<sup>15</sup> Letter at 1.

<sup>16</sup> See *Discussion Radio, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 19 FCC Rcd 7433, 7441 (2004), *modified*, Memorandum Opinion and Forfeiture Order, 24 FCC Rcd 2206 (MB 2009) (reducing forfeiture amount after review of submitted federal tax returns demonstrated a financial hardship).

<sup>17</sup> Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) of the Act clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. NO. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the terms in the Section 503(b) context. See *Southern California*, 6 FCC Rcd at 4387-88.

<sup>18</sup> Section 312(f)(2) of the Act defines “repeated” as “the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2). See also *Southern California*, 6 FCC Rcd at 4388 (applying this definition of repeated to Sections 312 and 503(b) of the Act).

<sup>19</sup> 47 C.F.R. § 73.3539; 47 U.S.C. § 301.

<sup>20</sup> A forfeiture amount of five hundred dollars (\$500) is proper for Station KWPA-LP, given the Commission’s recent decisions assessing forfeitures in the amount of \$500 against licensees of LPFM stations for violations of Section 73.3539 of the Rules and Section 301 of the Act, based on the station’s status as a provider of secondary FM translator service. See, e.g., *Soul’s Harbor Assembly of God Church*, Forfeiture Order, 24 FCC Rcd 8406 (MB 2009) (reducing forfeiture amount against LPFM station for late-filed renewal application and unauthorized operation of the station from \$7,000 to \$500).

<sup>21</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

<sup>22</sup> 47 U.S.C. § 504(a).

mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).<sup>23</sup> Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov and Alexander.Sanjenis@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, D.C. 20554.<sup>24</sup>

11. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail, Return Receipt Requested, and by First-Class Mail, to Mr. Michael J. Nutt, Whidbey Island Center for the Arts, P.O. Box 52, Langley, Washington 98260 and Ms. Judith Walcutt, P.O. Box 566, Freeland, Washington 98249.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau

---

<sup>23</sup> See 47 C.F.R. § 1.1914.

<sup>24</sup> *Id.*